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Dana Villa: Public Freedom

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1 | INTRODUCTION: PUBLIC FREEDOM TODAY

The Liberty of a Subject, lyeth therefore only in those things, which in regulating their actions, the Sovereign hath praetermitted: such as is the Liberty to buy, and sell, and otherwise contract with one another; to choose their own abroad, their own diet, their own trade of life, and institute their children as they themselves think fit; & the like. . . . There is written on the Turrets of the city of *Luca* in great characters at this day, the word *LIBERTAS*; yet no man can thence inferre, that a particular man has more Liberties, or Immunitie from the service of the Commonwealth there than in *Constantinople*. Whether a Commonwealth be Monarchicall, or Popular, the Freedome is still the same.

—Thomas Hobbes, *Leviathan*, chap. 21

To the state as an essentially political entity belongs the *jus belli*, i.e., the real possibility of deciding in a concrete situation upon the enemy and the ability to fight him with the power emanating from the entity. . . . The state as the decisive political entity possesses an enormous power: the possibility of waging war and thereby publicly disposing of the lives of men.

—Carl Schmitt, *The Concept of the Political*

Sovereign is he who decides on the exception.

—Carl Schmitt, *Political Theology*

I have heard the voices, I read the front page. But I'm the decider.

—President George W. Bush, April 18, 2006

Americans, we are repeatedly told, cherish freedom more than almost any other value or good. Yet the freedom we cherish is peculiarly one-sided. It is, first and foremost, a freedom of choice: the individual's freedom to decide on a career path, choose a religion, a life partner, a place of residence, a lifestyle, how to raise and educate their children. While it is tempting to view this identification of freedom with individual choice as a more or less direct outgrowth of consumer culture, it is important to remember that its fundamental presupposition is *not* the market. Rather, it is the absence of an authoritarian or tutorial state that tells us how to live and what to believe. As liberal political theorists have long insisted, freedom as choice depends upon freedom from interference—by the state or by any other powerful social body.

This “negative” form of freedom—the freedom *from* something—is often contrasted with more positive (and potentially authoritarian) forms.¹ Americans, in large part, instinctively reject the latter. Whatever freedom is, Americans believe, it *cannot* be the “freedom” that supposedly results when we are coerced to conform to *someone else's* idea of civic, moral, or religious virtue. Realizing one's best self—pursuing one's own good in one's own way, as J. S. Mill famously put it—may be a laudable *private* goal. However, the Rousseauian notion that we can somehow be “forced to be free” by public authority—that is, forced to rise above our individual desires and interests, so that we might better recognize and support the “common good”—elicits an instinctive abhorrence.

Rousseau, of course, is one of the two great political theorists of the civic republican tradition (the other is Machiavelli). This tradition has been competing with liberalism for over 200 years, although as a tradition it is much older. Whereas the liberal tradition has emphasized constitutional limits on governmental power and the priority of individual rights, the civic republican tradition has focused far more on active citizenship and the preconditions of *public* liberty. As readers of Machiavelli's *Discourses* and Rousseau's *Social Contract* are well aware, the theoretical results of this focus are not always pretty. Whether it's Machiavelli's insistence on military discipline and civil religion as the two most important “schools” of citizenship, or Rousseau's anti-cosmopolitan image of upright peasants deciding their common affairs under an oak tree, the civic republican

tradition has often displayed a deep-seated resistance to pluralism and anything resembling open-ended argument. It has valued unanimity over difference, and a quasi-*a priori* idea of the public good over the more *ad hoc* kind that emerges through robust debate and argument.²

Appeals to civic virtue, patriotism, and the Roman Republic have never gone completely out of style in Western political thought, and they have been more influential on American political development than many of us would care to admit.³ The contemporary American cult of the military as the one remaining locus of authentic civic virtue is but a single example. However that may be, most Americans would heartily endorse the criticism Benjamin Constant made of Rousseau and the civic republican tradition generally in his 1819 lecture “The Liberty of the Ancients Compared with that of the Moderns.”⁴ Drawing a contrast between the “freedom as collective sovereignty” idea found in ancient republics with the type of freedom offered by modern representative governments, Constant poses his audience a rhetorical question: “Ask yourselves, Gentlemen, what an Englishman, a Frenchman, and a citizen of the United States of America understand today by the word ‘liberty.’” His answer continues to resonate:

For each of them it is the right to be subjected only to the laws, and to be neither arrested, detained, put to death or maltreated in any way by the arbitrary will of one or more individuals. It is the right of everyone to express their opinion, choose a profession and practice it, to dispose of property, and even to abuse it; to come and go without permission, and without having to account for their motives and undertakings. It is everyone’s right to associate with other individuals, either to discuss their interests, or to profess the religion which they and their associates prefer, or even simply to occupy their days or hours in a way which is most compatible with their inclinations and whims. Finally, it is everyone’s right to exercise some influence on the administration of the government, either by electing all or particular officials, or through representations, petitions, demands to which the authorities are more or less compelled to pay heed.⁵

The liberty of the ancients, on the other hand, “consists in exercising collectively, but directly, several parts of the complete sovereignty; in deliberating, in the public square, over war and peace; in forming alliances with foreign governments; in voting laws and pronouncing judgments; in

examining the accounts, the acts, the stewardship of the magistrates; in calling them to appear in front of the assembled people, in accusing, condemning or absolving them.”⁶ Such “collective” freedom—which Rousseau-inspired Jacobins futilely tried to resurrect during the French Revolution—was, as Constant points out, entirely compatible with “the complete subjection of the individual to the authority of the community,” a subjection no *modern* individual would find bearable. The “liberty of the moderns,” then, is irreducibly and for the most part *individual* freedom. If the achievement and preservation of this liberty came at the price of older, possibly more “edifying” notions of *public* freedom, so be it. As Constant implies, it is a price we moderns simply have to pay.

Constant’s manner of posing the alternatives apparently pays tribute to what has become our contemporary “common sense.” We know better than to yearn after direct democracy and collective sovereignty; we realize that such a system is impractical in large nation-states; and we flatter ourselves that we have exchanged the “bellicose spirit” of the ancient republics for the far more benign “spirit of commerce.” In short, we know (albeit intuitively and often inarticulately) that “we can no longer enjoy the liberty of the ancients,” and that (as a result) “our freedom must consist of peaceful enjoyment and private independence.”⁷ *Public* freedom, Constant seems to be telling us, is a thing of the past. Any attempt to revive it would result in a miserable abortion. Most Americans—even those utterly unfamiliar with the history, ideological origins, and political excesses of the French Revolution—would probably agree. An individual and essentially privatized liberty is “the true modern liberty.”

Yet this self-flattering conclusion is grossly premature. Even Constant, his praise of the spirit of commerce and the romantic idea of self-development notwithstanding, did not carry through on the exhaustive either/or his lecture *seems* to construct. Unlike ourselves, the choice for Constant is not between *political or public* freedom (on the one hand) and *individual* freedom (on the other). The latter may, in fact, be the “true modern liberty,” but the former “is its guarantee.” While commerce may have made people more alike and wars less likely, the fact remains that even representative governments have a tendency to enlarge their powers, with or without the excuse of war.⁸ As a result, Constant warned, “the danger of modern liberty is that, absorbed in the enjoyment of our private independence, and in the pursuit of our particular interests, we should surrender our right to share in political power too easily.”⁹ For this very reason, “political liberty”—public freedom—“is indispensable.”¹⁰

This warning—echoed by Alexis de Tocqueville and J. S. Mill in the nineteenth century, and by Hannah Arendt in the twentieth—has largely fallen on deaf ears in America, and never with more disastrous results than in the present. What Constant, Tocqueville, and Mill saw as essential components of modern liberty—namely, the protection of individual rights and the recognition of individual interests—has become, in twenty-first century America, a defining creed and epistemological limit. The dyad of rights and interests effectively circumscribes our moral, political, and social world, as well as our conception of what freedom is or can be. The fact that group rights loom larger these days (thanks to the so-called “politics of recognition”) does little to alter the basic equation. “Rights” supposedly hold overweening governmental (or corporate) power in check, while “interests” propel our associations or affinity groups to enter the public realm episodically, if at all.

Our attitude toward what Constant called political liberty is, as a result, almost entirely instrumental. Occasionally such liberty is invoked in the struggle to gain or redeem certain basic rights, such as citizenship, the right to vote, the right to strike, the right to a decent education, and so on. More often than not, however, it is exploited to further the agenda of a particular interest group and its members. “The public” is less an arena for the exercise of a distinctive (nonprivate) form of freedom than it is an all-purpose container or scrim for the endless lobbying, bogus “citizen initiatives,” and staged political events that presently define our political lives.

The most striking feature of the contemporary public realm is how uniformly the attitudes of manipulation and opportunism characterize all who enter it. From the moralizing evangelical to the politically correct academic; from industry lobbying groups to those protesting “illegal aliens”; from unions to corporate boards—virtually everyone treats “the public” as a stage that can be briefly seized in order to get their particular “message” (and interest) across. This effort—what passes today for the exercise of “political liberty”—is the result of a strictly strategic calculation, one predicated on the media-dominated nature of our public sphere and the resulting tyranny of public relations and advertising.¹¹ In the past, Constant observed, war was the primary means of “getting what one wants.” In modern times, commerce took its place, but the goal was the same.¹² To this basic “world-historical” schema we might well add: and where commerce fails, “politics” as public relations provides the most obvious avenue for “getting what one wants.”

This is not to say that interests have no place in the public realm, or in motivating our exercise of political freedom. Ever since Hegel and Tocqueville attempted to renovate the civic republican tradition, the legitimacy of interests (properly mediated) has been seen by political theorists as an absolutely essential component of modern politics.¹³ Rather, my point is that the pursuit of interest (understood in its most vulgar and unmediated form) has become so ingrained in our political culture and character that it has made other, more authentically political attitudes and practices all but impossible. By universally taking up an exploitative, instrumental, and fundamentally strategic approach to politics and political action, we have rendered the public sphere an unfit place for human habitation.

The result is that many of us who still feel the tug of civic obligation (to use an old-fashioned term) participate at arm's length. We write checks to well-meaning NGOs and political action groups, the better to combat the disproportionate influence of multinational corporations and other "sinister interests" on the political and legislative process. There is an obvious irony here, one that is compounded when we take to the streets in protest over some new outrage. Our government views such public demonstrations—and there were many, both here and abroad, in the run-up to the Iraq War—as little more than "letting off steam." Where political action actually transcends the opening of a checkbook—where it is relatively popular, spontaneous, and civic-minded in character—it is treated by our leaders as little more than white noise, irrelevant to the political "process." The resulting impression is that of enormous, interlocking corporate and governmental structures far removed from the "noise" emanating from an emaciated and impoverished public sphere.

This configuration doesn't exactly mirror the nightmare of "administrative despotism" that Tocqueville outlined in the second volume of *Democracy in America*, but there are eerie resemblances nonetheless. Tocqueville worried about how the advent of democratic equality would destroy "intermediary powers," leaving equal but impotent individuals to confront an enormous, albeit attentive, bureaucratic state. Without organization, Tocqueville thought, such a "confused mass" would be unable to "raise new secondary powers." As a result, it would soon find itself relegated to the status of a well-tended herd.¹⁴

Such an over-centralized sovereign power—one that usurps the educational, economic, and welfare functions of civil society—has not exactly been our fate. Libertarians to the contrary, market forces play far too large a role in our daily lives for our government to convincingly fill the role of

the omni-competent Leviathan Tocqueville sketches. The contemporary reader is, however, struck by Tocqueville's descriptions of popular impotence and docility. It is these passages—rather than his description of a single, towering, and omnipotent central power—that resonate in the present. For what Tocqueville saw with unparalleled clarity was the way in which a people unused to the exercise of public freedom would soon forget both its practice and its value. Given broad social equality by recent revolutions, divorced from the corporate or caste affiliations of the feudal past, relieved of the exercise of traditional local freedoms—in such a condition, the dissociated “democratic individual” would invariably turn in upon himself, his family, his friends, and his material interests. He would value public order more than public freedom, and would view the latter's demands as a set of irritating obstacles to the untrammelled pursuit of his self-interest.¹⁵

There is, then, a “bourgeois” and not merely a socialist “road to servitude,” a fact that Tocqueville, if not his twentieth-century disciples, knew all too well. The distinguishing characteristic of the former is that it prefers tranquility, order, and the accumulation of wealth to a “dangerous freedom.” It is one of the ironies of Tocqueville's legacy that the peculiar danger he saw American democracy as successfully eluding—thanks to a pervasive public spirit, an intense attention to political matters and local administration, and a habit of association for all sorts of purposes—has returned to haunt us with a vengeance. What was once a pathology peculiar to the haute bourgeois class in Europe has become a universal affliction. The “taste for physical gratification” that Tocqueville saw reflected in but contained by American middle-class mores has become an obsessive pursuit for nearly everyone. In our hyped-up consumer culture, the public realm and the responsibilities of citizenship are, for the most part, well and truly neglected. Our sense of political powerlessness grows as our creature comforts accumulate.

Of course, such impotence isn't entirely self-incurred. For many, the neglect of public freedom is not simply a function of the desire for additional comforts. A large percentage of Americans have abandoned the public sphere less out of craven materialism than out of a relentless, daily anxiety about their (and their families') future. The lesson that everyone is replaceable and, in a sense, disposable is a lesson taught again and again by the business pages of our newspapers, as well as by countless individual stories of down-sized or out-sourced workers.¹⁶ It is increasingly taken for granted—by politicians, policymakers, editorial page writers, and the

people themselves—that our “national mission” is less to realize democracy than to “be competitive” in the international marketplace—even if this means layoffs in the tens of millions.¹⁷

An ingrained sense of one’s own relative superfluosity in the maw of global capitalism is not exactly a recipe for “empowerment.” In recent years, the work of “atomization”—that is, the spread of the dissociative tendencies that Tocqueville ascribed to a “democratic social condition”—has been radicalized and accelerated by the advent of a robustly global competition. Far more than government, the marketplace throws us back upon ourselves, enforcing the practice of a distinctly non-Emersonian form of self-reliance. When it comes to the production and reproduction of citizen docility—the phenomenon Tocqueville feared most—nothing works better than the iron discipline and myriad shocks of the labor market. It is to *this* discipline—and the perpetual anxiety that underlies it—that captains of industry and all too many governmental leaders would like to see us subjected, sans intermediaries. A “disciplined” and fearful workforce—one that lacks both the organization and elementary solidarity necessary to assert itself—is no recipe for a self-governing citizen body.

This last observation may seem more Marx than Tocqueville. However, it is extremely important to remember two things if we are to register Tocqueville’s lessons about the threats to public and political freedom in the modern, democratic world. The first is that he thought the “art of association”—and especially association for *political* purposes—was essential if the disempowering tendencies of privatism (or what he called “individualism”) were to be combated.¹⁸ The second is that, while writing of a still largely pre-capitalist and pre-industrial America, he surveyed the future with intense anxiety. Even in 1840, Tocqueville sensed the emergence of a new, un-democratic world built on the foundation of industrial capitalism. In a chapter entitled “How an Aristocracy May be Created by Manufactures,” he writes:

In proportion as the principle of the division of labor is more extensively applied, the workman becomes more weak, more narrow-minded, and more dependent. The art advances, the artisan recedes. On the other hand, in proportion as it becomes more manifest that the productions of manufactures are by so much the cheaper and better as the manufacture is larger and the amount of capital employed more considerable, wealthy and educated men come forward to embark on manufactures. . . . This

man resembles more and more the administrator of a vast empire; that man a brute.

The master and the workman have then here no similarity, and their differences increase every day. They are connected only like the two rings at the extremities of a long chain. Each of them fills the station which is made for him, and which he does not leave; the one is continually, closely, and necessarily dependent upon the other and seems as much born to obey as the other is to command. What is this but aristocracy?¹⁹

Such *structural* dependence and inequality were, of course, defining characteristics of classical capitalism, and created the kind of abyss between classes that Tocqueville, with the French experience very much in mind, could not help but see as the prelude to perpetual, low-grade civil war. While America today is far from the class warfare that characterized much of Europe in the middle and late nineteenth century, we have clearly advanced well down the road toward the creation of a new form of caste society. This is a society in which decent health care, education, job security, and political influence are the prerogatives of those in middle-management or above, and in which everyone—with the possible exception of the super-rich—lives in a perpetual “fear of falling.” As a result, many of us have indeed become part of what Tocqueville described as a “flock of timid and industrious animals”—except that we can hardly count on the government to be our “shepherd.”²⁰

In addition to privatism, materialism, rising economic anxiety, and increasing structural inequality, we have to contend—after September 11, two wars, and an open-ended “war on terror”—with an atmosphere of generalized fear. This fear sometimes recedes, but it is perpetually on call, the better to guard the expanding prerogatives of the national security state and the interests of corporate power.

I want to be clear here, since some academic critics of the “war on terror” have treated it as if there were no concrete threat whatsoever. Of course there are people and organizations who wish us great harm. The challenge they present, however, is to police work, intelligence-gathering, and international cooperation (not to mention the “winning of hearts and minds” despite enormous cultural differences). To treat the “war on terror” as a literal and open-ended war is to create a perpetual state of emergency in which the executive branch can demand, and to a surprising extent receive, the deference of the other two branches of government—branches

that the founders intended to check and balance. It is to create a situation in which constitutional democracy threatens to transform into a state of the old-style European variety. In such a polity the government lays claim to a virtual monopoly on all meaningful power, action, and judgment. The great accomplishment of the founders—their creation of an ingenious system of decentralized power, their theoretical and practical overcoming of the idea of the centralized, sovereign state—is tossed onto the ash heap of history.

Fear, then, is every bit as disempowering as privatism and pervasive economic anxiety. And—as Tocqueville, Constant, and their theoretical mentor, Montesquieu, knew all too well—fear is the perpetual accomplice of despotism, of whatever variety. It is in the interest of the despot to create and perpetuate a climate of fear, the better to further separate his subjects, make joint action less likely, and solidify his monopoly on public force and public judgment.²¹

In our own time, fear has been used to make dissent look unpatriotic; to suspend or make conditional many of the constitutional protections we take for granted; to provide an excuse for ever-heightened levels of government secrecy and non-transparency; and to hijack American foreign policy. The “trust us” attitude of the George W. Bush administration flies in the face not only of democratic self-understanding (“distrust” being a constitutive element not only of our system of checks and balances, but any and all forms of liberal constitutionalism). It also collides with the most basic principles of the Enlightenment war against absolutist authority. In “An Answer to the Question: What is Enlightenment?” (1784), Immanuel Kant argued that *maturity* and an escape from the infantilizing paternalism of the old regime were predicated upon the “courage to use one’s own understanding.”²² Since September 11, 2001, it has been clear that our leaders prefer we not follow Kant’s advice.

This leads to an obvious conclusion, one I think that neither Constant nor Tocqueville would disavow. The “daddy state”—the state that fights, that decides who is friend and who is enemy—is an even greater threat to democratic maturity and self-government than the so-called “mommy state” (the European welfare state of the latter half of the twentieth century). “Democratic despotism” may take the “soft” form Tocqueville outlined at the end of *Democracy in America* (a centralized state power that is “absolute, minute, regular, provident and mild”). But it may also take the “hard” form of a neo-Hobbesian entity, one that cuts civil society out of the circuit of political debate and decision, all the while maintaining an increased surveillance of the “nonpolitical” sphere.²³

What to do in this situation? The political theorists who grappled with the problem of public freedom after Rousseau hardly provide a list of handy answers for our situation. They do, however, provide a set of alternative understandings and conceptual mappings of the terrain that is the public-political realm. This is a terrain that the traditional American understanding of politics as the clash of interests tends to obscure.²⁴ Many of the theorists addressed in this volume were motivated by the desire to find avenues through which a sense of agency and public power could be either generated or restored amongst a “crowd” of increasingly dispersed and privatized individuals.

In this regard, much of what Hegel, Tocqueville, Mill, and Arendt have to say about public-political freedom can be viewed as drawing out the implications of the fraught passage from being subjects to becoming citizens. With the possible exception of Arendt, none of them depend on the time-honored republican trope of looking to the ancient Greeks or Romans for images of freedom in the present.²⁵ Rather, they all see *modern* political freedom as a distinctive synthesis of liberal and republican elements—the kind of synthesis Constant gestured to strongly (if inadequately) at the end of his famous lecture. Modern political freedom is thus not a question of literal self-government or “direct democracy.” But neither is it a question of government by others, of rulers and ruled. If it were, it could be hardly be called *political* freedom. Rather, it would be that pure “freedom from interference” which Hobbes—the first modern theorist of despotism—thought perfectly compatible with absolutist government. For absolutist government (of a rule-based, non-arbitrary sort) provides that perfect “freedom *from* politics” that leaves us free to pursue the essentially nonpolitical goal of “commodious living.” The price of this “freedom from” politics and political responsibility is, of course, a willingness to trade the status of citizens for that of subjects.

The huge accomplishments of political modernity notwithstanding, I think we are well on the way to becoming subjects once again. This danger was felt intensely by Tocqueville, but also by Hegel, Mill, and Arendt. Reworking civic republican themes within a modern (liberal or individualist) context, they were all concerned to identify the new forms of despotism and self-incurred immaturity that threaten the newly won “freedom of the moderns.” In this respect, at least, their work is continuous with the more “totalizing” critiques of theorists like Adorno, Marcuse, and Foucault. What separates the thinkers in the first group from those in the second is the sense that a good portion of the dangers *are*

self-incurred, and remediable by concrete practices, revived distinctions, and specific institutional reforms. None of this first group of theorists denies or papers over the structural constraints of modern politics. But—just as important—none of them buy into the idea that the public as such is a privileged site of disciplinary power, the repression of difference, or “total domination.” In other words, none of them comes close to suggesting (as Adorno, Marcuse, and Foucault unfortunately do) that the distinction between “citizen” and “subject” no longer signifies.

In this regard, we could do worse than understand the sequence of Hegel, Tocqueville, Mill, and Arendt as attempting to create and expand a place for difference within the (previously homogenizing and repressive) civic public. True, their “solutions” to this dilemma—whether we consider Hegel’s rationally differentiated state, Tocqueville’s idea of civil society, Mill’s notion of a liberal public, or Arendt’s emphasis on human plurality—often fail to strike a convincing balance between the “universal” and the “particular,” the common good and the (enlightened) individual or group interest. But striking or at least articulating that balance is indeed their joint project. It is, in fact, the defining problem of all post-Rousseauian theories of public freedom. How to do justice to the legitimate claims of individual rights and private liberty (on the one hand) and public freedom and political action (on the other)? How to conceive a realm of social or political experience in which particular interests are gradually educated or “mediated,” reaching a higher level of generality (albeit one far removed from the fantasy of an inclusive harmony or unity)?

Needless to say, it is a lot easier to solve these problems if we focus on one side of the rights/public liberty equation. This is what Rousseau and Machiavelli did, in their distinct but related ways. It is what many liberal thinkers have also done, but starting from the standpoint of individual rights rather than that of public freedom. From Madison’s famous argument in *Federalist* 10 to the hegemony of interest group politics in America today, the tendency has been to downplay if not eliminate the need to “educate” one’s interests to what I have called higher levels of generality.²⁶ The clash of interests, we like to believe, will take care of itself, even if the spectacle of that clash is by no means edifying and largely serves as a breeding ground for cynicism.

Cynicism toward the very idea of a fruitful mediation between particular and general interests is, of course, what drives Karl Marx’s famous critique of the state/civil society distinction in his early essay “On the Jewish Question” (1843). Marx argued that a secular, liberal, or constitutional

republic consigned human beings to living a divided, double life: half as community-minded *citoyen*, half as self-interested *bourgeois*:

Where the political state has attained to its full development, man leads, not only in thought, in consciousness, but in *reality*, in *life*, a double existence—celestial and terrestrial. He lives in the *political community*, where he regards himself as a *communal being*, and in *civil society* where he acts simply as a *private individual*, treats other men as means, degrades himself to the role of a mere means, and becomes the plaything of alien powers. The political state, in relation to civil society, is just as spiritual as is heaven in relation to earth.²⁷

Marx—with his ideas of an all-sided, integrated and (above all) social existence as a normative ideal—thought such a “divided” existence was a necessarily alienated one. Whereas Tocqueville expressed delight and wonderment at the fact that “an American attends to his private concerns as if he were alone in the world, and the next minute he gives himself up to the common welfare as if he had forgotten them,” Marx saw such a “double existence” as an unstable and untenable compound—one that, in the end, was a fraud.²⁸ It was based on the illusion that human beings could be two very different things at once (or, at least, in very rapid succession): public-minded citizens and relentlessly egoistic maximizers of their own utility.

While the institutions of a secular republic are built upon the idea of such a “split” between public and private existence (codified in the “rights of the citizen” and the “rights of man,” respectively), Marx argued that the tension between the two would always resolve itself in favor of the self-interested forces of civil society (the sphere of the market and particular interests). In this regard, Marx thought post-revolutionary French realities proved a less misleading guide than the American experience, at least as it had been interpreted by Tocqueville. Scratch a *citoyen*, Marx claimed, and you will always find a *bourgeois*. The latter is the real or “concrete” individual, whereas the former is a kind of religious projection or cover-up, the “political lion-skin” under whose cover we pursue our selfish interests. Such is the inevitable outcome of a social body divided up into an “unreal” universality (the state) and an all-too-real particularism (civil society).

Marx’s tracing of our “double existence” back to what he calls the “universal secular contradiction between the political state and civil society” provides the backdrop to his breathtaking and (to liberals, at least)

scandalous deconstruction of the “rights of man.” These rights provide the moral basis for the constitutional regimes brought forth by the French and American Revolutions. It is in the name of the “rights of man” that governmental power is limited, and it is to preserve them that the “rights of the citizen” are promulgated and protected. But what, Marx asks rhetorically, do the “rights of man” really amount to? Who is the “man” (as opposed to the “citizen”) that possesses these rights, and how does the “schism” between state and civil society effect their shape and content?

Marx turns to the texts of the French *Declaration of the Rights of Man and of the Citizen* of 1791, the French Constitutions of 1793 and 1795, and the state constitutions of Pennsylvania and New Hampshire to provide an answer.²⁹ The human rights of equality, liberty, security, and property are revealed, one by one, to be rights of the selfish individual—the individual as civil society knows and makes him. Thus liberty—“the power which man has to do everything which does not harm the rights of others”—is, according to Marx, the power of the “isolated monad” to do whatever he wants within his own little world, so long as it does not harm the (equally selfish) rights of others in their own little worlds. The idea that freedom might have something to do with, or even be constituted by, relations with others is never seriously entertained.

Likewise, the right to property is, according to Marx, essentially the right to self-interest. It is the defining right of man considered as a creature of the egoistic realm of civil society. The rights to equality and security are, respectively, the right to be considered equal before the law as any other member of civil society; and the right to have one’s individual person, rights, and property secured by what is, at bottom, a “night watchman state.”³⁰

Marx’s deconstruction of the “rights of man” (and—by extension—the “liberty of the moderns” articulated by Constant) will be seen as persuasive by those who are convinced (as he was) that our “social” nature—the fact that we are constituted as individuals by networks of language, practices, and relations that are irreducibly social—implies a normative and binding idea of what a genuinely free individual looks like. Such a genuinely free individual will view social relations not as a limit to his or her freedom, but as the very medium and substance of their freedom. This is the gist of Marx’s much misunderstood notion of man’s species-being (*Gattungswesen*).³¹

Leaving aside the controversy of whether the human subject or self is, or should be, viewed more like a “network of relations” than an “isolated

monad,” we are able to see Marx’s deeper critical point. Title notwithstanding, the real subject of “On the Jewish Question” is the disaggregation of various spheres of life that occurs with the collapse of feudalism and the *ancien régime*. With the transition to modernity—consummated politically by the “bourgeois” revolutions in America and France—the public-political sphere finally separates out from the theological. This separation is paralleled by the dismantling of the so-called “embedded” economy and the emergence of an autonomous market and social sphere (the “private” realm that constitutional regimes are designed to protect). This new constellation generates the distinction between state and civil society, a distinction that lies at the heart of Hegel’s political philosophy but that is also presumed (albeit in a somewhat confused way) by such proto-liberal thinkers such as John Locke and Thomas Paine. From this point on, the common or “universal” will be the province of the state or government, while “particular” interests will find their home in civil society.

However, the emerging independence of society in the late seventeenth and early eighteenth centuries actually expressed a newfound strength. The state, once the director and arbiter of virtually everything of import, increasingly found itself recast as the servant and protector of powerful “social” interests. Thus, what Arendt described as the “rise of the social” in the early modern age actually created a new (and largely instrumental) configuration between state and society. In this new dispensation, the political realm was increasingly subservient to the social. One result was that the “public good” increasingly came to be viewed—by economists, utilitarian philosophers, and a rising middle class—as little more than the aggregate of numerous individual preferences.

Unsurprisingly, this reversal of relative priority—the newfound hegemony of the social over the political—had broad implications for the relative “dignity” of the political world. As Marx observes, with this reversal “the citizen is declared to be the servant of egoistic ‘man.’ . . . The sphere in which man functions as a species-being is degraded to a level below the sphere in which he functions as a partial being.”³² This can be seen in the way the “rights of the citizen” are retrofitted (so to speak) to serve what Marx viewed as the essentially egoistic core of the “rights of man”—namely, man as a creature of market society.

It is this reconfiguration of “social” (market or economic) and “political” powers that explains why Marx was so dismissive of the idea that the institutions of a liberal republic could successfully “mediate” (that is, educate and expand) the partial or particular interests of “civil society.”³³

The dissolution of feudal society may have liberated civil society from direct and personalized *political* domination, but it did nothing to transform (“revolutionize”) the constitutive elements of that society. In Marx’s pithy summation, “Feudal society was dissolved into its basic element, *man*; but into *egoistic* man who was its real foundation.”³⁴

Given the depressing realities of the present, I must say that I share more than a little of Marx’s skepticism concerning the liberal-republican project of mediation, even as I reject the utopianism of his notion of our “species-being” (and the idea of a “relational” freedom that goes along with it).

Confronted by the contemporary realities of lobbying, the intrusion of business into the process of legislation and regulation (to the point where many industries, such as energy and pharmaceuticals, more or less write the laws intended to regulate them), and ever-proliferating interest groups, only the most shameless of corporate shills could possibly maintain that our public-political realm works to further the generalization (or “education”) of interests. To the contrary, it is increasingly assumed—by politicians and business leaders, but also by average citizens, educators, and even legal theorists—that the *raison d’être* of American constitutional government is to facilitate economic activity. We have become, in Sheldon Wolin’s apt phrase, an “economic polity,” one in which the curtailment or education of interests is seen as unworkable, unnecessary, and un-American.³⁵

In the face of this unquestioned bit of “common sense,” the reintroduction to the broad problematic shared by Hegel, Tocqueville, Mill, and Arendt is a salutary exercise. However fraught their individual attempts to renovate certain aspects of the civic republican tradition may be, these theorists remind us that the public-political world has a significance and purpose beyond the protection of property and the securing of public order, two goods that can be provided by even the most authoritarian of regimes (for example, China).

The starting point of this diverse set of theorists—the thing that makes them all “modern” in Constant’s sense of the word—is that they recognize the pursuit of interest as a large and legitimate sphere of activity, all the while insisting that the public-political cannot be reduced to—or made an epiphenomenon of—such activity. Or, to put it in a more positive formulation: Hegel, Tocqueville, Mill, and Arendt all insist on the relative autonomy or dignity of the public realm.³⁶ They remind us that unless citizens are able to see the difference between the pursuit of interest (on the one

hand) and their joint responsibility for a common world (on the other), an exploitatively instrumental configuration of the sort Marx postulated would invariably result. Hence their shared emphasis on what (for want of a better word) I will call the “educational” experience of public participation and sustained attention to public affairs.

But isn’t this a return to the most dubious dimension of the civic republican tradition—namely, the heavy emphasis on the “formative” project, the project of “correct” socialization urged by Machiavelli and Rousseau? And doesn’t this, in turn, summon up the specter of a tutorial or paternalistic state?

It is indeed jarring when we read a liberal theorist like Constant stating that “institutions must achieve the moral education of the citizens.”³⁷ By this, however, he did not mean the institutional stamping of civic “form” onto the more or less promising “raw material” of the people. The latter was, indeed, the project of republican theorists like Machiavelli and Rousseau. Above everything else, they wanted to create a morality of the common good among citizens. Such a morality demanded a root-and-branch socialization, one that Machiavelli and Rousseau saw as proceeding through such “neo-Roman” institutions as military service, civil religion, and a rigorous censorship.³⁸ Corruption—the gradual dissolution of this civic form through the rise of particular or selfish interests—would be kept at bay only so long as laws, institutions, and mores worked together to effectively contain those who might exploit public institutions for private advantage (usually, the wealthy or noble class, the “overmighty”). However, once the lure of inequality, luxury, and private interest took hold, a “corrupt” people would be able to retain its liberty only with the greatest difficulty.³⁹ For unreconstructed civic republicans like Machiavelli and Rousseau, commerce and representative government are, respectively, a great accelerator and a clear symptom of civic corruption. They attest to the substantial loss of public freedom.⁴⁰

As a champion of both representative government and the spirit of commerce, such a robustly republican “formative” project was the furthest thing from Constant’s mind. What, then, did he mean when he said that “institutions must achieve the moral education of the citizens”?

The answer—one echoed, in various ways, in Hegel, Tocqueville, Mill, and Arendt—was that citizens must be given something to do for the public if they were to become capable of exercising the “active and constant surveillance” of governmental authorities that a representative system demands.⁴¹ As already noted, Constant thought that the danger of modern

liberty was that, “absorbed in the enjoyment of our private independence, and in the pursuit of our particular interests, we should surrender our right to a share in political power too easily.”⁴² This danger was hardly speculative. The French bourgeoisie embraced Napoleonic despotism not one but twice—first in 1804, then again in 1851—preferring public order to public liberty. The former condition was, after all, much more conducive to the steady accumulation of profit. As Tocqueville ruefully observed in volume 2 of *Democracy in America*:

When the taste for physical gratification among them [a democratic people] has grown more rapidly than their education and their experience of free institutions, the time will come when men are carried away and lose all self-restraint at the sight of the new possessions they are about to obtain. In their intense and exclusive anxiety to make a fortune they lose sight of the close connection between the private fortune of each and the prosperity of all. It is not necessary to do violence to such a people in order to strip them of the rights they enjoy; they themselves willingly loosen their hold. The discharge of political duties appears to them to be a troublesome impediment which diverts them from their occupations and business.⁴³

Hence the imperative of *some* political involvement on the part of ordinary citizens, an involvement that transcends the (occasionally meaningless) ritual of electoral participation. As early as 1820, Hegel wrote: “As for popular suffrage, it may further be remarked that especially in large states it leads inevitably to electoral indifference, since the casting of a single vote is of no significance where there is a multitude of electors.”⁴⁴ Civic virtue in the strong republican sense might well be a dangerous anachronism in the modern world. Nevertheless, political theorists still had to find a way to enable the *citoyen* to coexist with the *bourgeois*, and not merely as the latter’s “political lion-skin.” They had to find a way, in other words, to replace old-style civic republicanism with a distinctively modern form of public spirit—what Arendt would call “care for the public world.”

The primary *modern* avenue for the cultivation of public-political traits was—as Hegel, Tocqueville, and Mill all emphasized—participation in associational life, understood in both its political and social dimensions.⁴⁵ But the cultivation of public spirit also depended on a real constitutional or institutional presence, a “public space” that was both durable and accessible to ordinary people. Tocqueville did not call political asso-

ciations and participation in local administration the “large free schools” of democratic citizenship for nothing. Mill gave a classic formulation of the moral-political benefits of such expanded participation in his *Considerations on Representative Government* (1861):

It is not sufficiently considered how little there is in most men’s ordinary life to give any largeness either to their conceptions or to their sentiments. Their work is routine; not a labor of love, but of self-interest in the most elementary form, the satisfaction of daily wants; neither the thing done, nor the process of doing it, introduces the mind to thoughts or feelings extending beyond individuals; if instructive books are within reach, there is no stimulus to read them; and in most cases the individual has no access to any person of cultivation much superior to his own. *Giving him something to do for the public, supplies, in a measure, all these deficiencies.* If circumstances allow the amount of public duty assigned to him to be considerable, it makes him an educated man. . . . He is called upon, while so engaged, to weigh interests not his own; to be guided, in the case of conflicting claims, by another rule than his private partialities; to apply, at every turn, principles and maxims which have for their reason of existence the common good. . . . He is made to feel himself one of the public, and whatever is for their benefit to be for his benefit. Where this *school of public spirit* does not exist, scarcely any sense is entertained that private persons, in no eminent social situation, owe any duties to society, except to obey the laws and submit to the government.⁴⁶

The predominant image here is less that of a “school of public spirit” constructed by a great lawgiver (such as Moses, Lycurgus, or Romulus—the preferred examples of Machiavelli and Rousseau) than a constitutional arrangement that provides ample and open-ended opportunity for ordinary citizens to learn basic civic arts (and modes of judgment) by doing. As the passage above attests, Mill tended to view such self-instruction as dependent upon limited and indirect guidance from the more enlightened or instructed classes.⁴⁷ Nevertheless, he is building on a key insight, one we find articulated in both Hegel and Tocqueville.

The gist of this insight might be put as follows. The only way we can cultivate “care for the public realm” in a world where people’s primary energies are (necessarily) devoted to the pursuit of private interest is to make sure that associational life and political participation provide ample

opportunities for the gradual education and generalization of interests. What Tocqueville famously described as the “close tie that unites general to private interest” can be drawn out by experience in the political or associational realm. Such experience invariably presses us to revise our understanding of the nexus between ourselves, our interests, and our identities and the rights, interests, and identities of others. The “public”—conceived broadly as an institutional *and* associational space, one that cuts across the state/civil society distinction⁴⁸—is the place where such mediation occurs, if it occurs at all.

Many of the chapters in this volume are devoted to teasing out the nature and prospects of such mediation, as Hegel, Tocqueville, Mill, and Arendt conceived it. My primary concern is to show how representative institutions, a pluralistic associational life, and what I call a “decentered” or highly differentiated state structure opened up a new and varied range of public spaces—at least in theory. The post-Rousseauian problematic of public freedom in European political thought of the first half of the nineteenth century is thus not characterized by any nostalgia for a world we have lost (the “beautiful freedom” of the Athenian polis or Roman Republic), nor is it animated by a sense of inevitable closure. While well aware of the potential pathologies arising from a democratic social condition (including privatism, the rule of public opinion, and the strong tendency toward bureaucratic despotism), Hegel, Tocqueville, Mill, and Arendt are all marked by what we might call a sober or disillusioning form of hopefulness. Like Constant, they are ruthless in their hunting down of anachronisms in political theory and practice. Unlike him, they offer very specific recommendations for actualizing the potential of the new spaces of public freedom opened up in the post-revolutionary world.

Of course, many of their hopes have failed to bear fruit, the recent celebratory literature on the topic of “civil society” notwithstanding. Why is this the case?

One answer is that the complex structures of representation, mediation, deliberation, and decision they envisioned presumed not just substantial public spirit and attentiveness on the part of ordinary citizens but also a balance between the political and the economic spheres. The world Hegel, Tocqueville, and Mill inhabited was a world in which the systemic colonization of the public-political world by economic forces and categories had only just begun. This is the context for Hegel’s elaborate attempt in *The Philosophy of Right* to demonstrate how the modern, “rational” state could give civil (market) society its due without being overwhelmed by its

particularistic, egoistic spirit. It is also the context for Tocqueville's intense focus on the political arrangements and cultural preconditions (the "free *moeurs*") that made American democracy possible—a focus that permitted only the most hurried glance at the rising "aristocracy of manufactures." It is, finally, the context for Mill's endorsement (in his *Principles of Political Economy*) of free markets as a crucial facilitator of the value of autonomy, an endorsement combined—only somewhat paradoxically—with an oft-expressed frustration that the only outlet for individual energy and creativity in mid-nineteenth century Britain was business.

All of these analyses depart from what seems the ungrounded assumption that political and cultural factors either outweigh or are equal to the troubling expansion of strictly economic forces. Whatever inequities the latter introduced (and Hegel, Tocqueville, and Mill were far from blind to these), they could still be coped with by flexible yet vigilant political arrangements. For these theorists, the real threats to public freedom remained: (a) the state as a potentially mechanical and enervating (centralized) structure; and (b) the rise of an intolerant and potentially monolithic public opinion. If Hegel, Tocqueville, and Mill look a bit quaint to us today, it is because they lived not just in a pre-Marxian but also in a pre-Weberian world. They lived, in other words, in a world in which neither capitalism nor bureaucracy had become pervasive and seemingly all-determining structural realities. Such structures of congealed political and economic power were still largely threats on the horizon, rather than overwhelming actualities in the present.

It is not surprising, then, that the *social* theories of Marx and Weber often seem to speak much more directly to our situation. Marx's recurring image of economic instrumentalities that become ends-in-themselves, dominating those who created them, or Weber's metaphor of an "iron cage" of administrative rationality capture the ubiquitous sense of disempowerment that accompanies life in the late modern world. Wherever one turns, one confronts enormous structures of governmental, bureaucratic, and corporate power, structures that do indeed have a "life of their own" and that often (if not necessarily always) treat us as means rather than ends. In such a structurally recalcitrant world, it is hardly surprising that many conservatives prefer to address the problems of American democracy strictly in terms of the vocabulary provided by Tocqueville. Our problems, they insist, are a function of the decline of our manners and mores, our lack of attention to virtue and to a still needed education in character.

Would that things were so simple. No amount of “moral” education will prevent America from devolving into a superpower caste society, one whose relationship to democracy is formal or notional at best. Even in the terms provided by Tocqueville and Mill (for obvious reasons, Hegel is rarely cited by American conservatives), the critics on the right get it wrong. The “education” envisioned by the great political thinkers of the first half of the nineteenth century was an education in the rudiments of self-government and public life. It was an education not of “character,” but of political judgment and agency for classes who had been excluded from any political participation for centuries on end. Yet even if we get Hegel, Tocqueville, and Mill “right”—that is, even if we see the “educational” dimension of their political theories as political rather than merely or mostly moral—we may still feel they haven’t begun to address the most difficult aspects of the late modern condition. Popular ignorance, apathy, and distraction present huge impediments to recovering what is left of our diminishing democracy. It is sobering to realize that these are hardly the only, or indeed the largest, obstacles to that project.

Confronted by grim contemporary reality, politically engaged students (not to mention their professors) often swing to the opposite side of the theoretical spectrum. They opt for a theory of “total” or systemic domination such as we find in “classic” Frankfurt School theorists (Horkheimer, Adorno, and Marcuse) and in mid-career Foucault (the Foucault of *Discipline and Punish*).

The relentlessly downbeat analyses of neo-Marxism in the middle of the last century are eminently understandable once they are placed in their historical context, a context that included the defeat of the left, the rise of fascism, and the horrific destruction of European Jewry. What is more surprising is how these analyses were appropriated and simplified by movement we know as postmodernism. From the standpoint of political theory, postmodernism was notable for installing a new manic-depressive dialectic, a dialectic we only now seem to be emerging from. Swinging relentlessly between the poles of claustrophobic forms of total domination (on the one hand) and new forms of vitalism and subjectivism (on the other), postmodernism promised that all could be changed if only we adjusted our attitude. The unsurprising result was a complete lack of concern for, or engagement with, the problem of how to institutionalize freedom in the late modern world.

I say “unsurprising” because so much of what is written today flows directly from Weber’s iron cage metaphor, through Adorno and Hork-

heimer's idea of total domination (*totale Herrschaft*), to (finally) Foucault's notion of a disciplinary society ("the carceral"). With each step in this progression, the terms of domination are ratcheted up. In the end, the only move left is to rise, Peter Pan-like, above the entire terrain of political parties, institutions, debates, etc. of one's local or national political scene. One imagines oneself part of a larger, utterly deterritorialized mass of the oppressed, a mass engaged in globally networked, decentralized struggle against new forms of imperial hegemony (the rule of multinational corporations backed up by American military might).

This vision—Hardt and Negri's "multitude"—is an appealing one for many on the "theory left."⁴⁹ It chimes with the ingrained Marxist presumption that representative democracy and liberalism more generally were a sham from the very beginning, updating it by declaring "sovereignty" to be an outmoded and anachronistic concept. Global hegemony requires global resistance—*la lotta continua*, albeit this time outside of any specific set of institutions and without any politically organized people. In this way, one moves from feeling absolutely impotent (as an atomized member of a more or less marginalized American left) to feeling enormous empowerment (as part of a trans-subjective, global, and vitalist mass). Suffice it to say that this fantasy of global solidarity and resistance, based on a dubious neo-Spinozist metaphysics, is precisely that. More troubling, perhaps, is that it feeds on the human, all too human, desire to feel at one with larger-than-human forces. As Arendt pointed out long ago in *The Origins of Totalitarianism*, such a desire is a highly dubious motivation for political action.

Arendt was responding to the rise of rise of tribalist conceptions of political identity following World War I. During this period, she thought, political romanticism truly came into its own, as the idea of political membership was shorn of its public, constitutional, and "worldly" dimensions. For the Pan-Germanist and Pan-Slavist movements of this period, what remained was (respectively) the appeal to one's racial identity or to one's "Slavic soul." What at first seemed like a forward-looking deterritorialization of political identity—born of the yearning to go beyond the institutional confines of the nation-state—was actually a regress to a vulgarized version of the cult of romantic inwardness. Who one is, politically speaking, was held to have nothing to do with the finite, artificial, and institutionally defined space one inhabited, and everything to do with the pre-institutional, pre-political identity of one's race or "soul." Of course, today's political romantics are proud of having overcome all such "particularist" identities.

However, they are at one with those of yesteryear in seeing political identity in supra-institutional (and supra-constitutional) terms.

As I already suggested, this move is to be expected in a post-Weberian world where institutions are experienced largely as cages or as more or less subtle vehicles for domination. The move from political action as the joint action of citizens in the public realm (Arendt) to political action as a radically decentered and mobile resistance (to corporations, the state, and the everyday discipline of schools, hospitals, and prisons: Foucault, Hardt and Negri) is a move designed to make us question the sheer tenability of the public/private distinction, a distinction that underlies both the liberal and civic republican traditions and the idea of constitutional democracy itself.

One can, of course, recognize the less-than-benign impact of multinational corporations, and the less-than-liberal operation of everyday disciplines, without abandoning the normative ideals of limited government and critical, vigilant citizenship of the sort called for by Locke, Constant, and Arendt. It is true that the public/private distinction can, in a reified or “naturalized” form, blind us to exercises of power that are not “state-centered.” But it is a long way from the acknowledgment that the liberal and republican conceptions of power are often inadequate to the analysis of new economic and disciplinary configurations, to the conclusion that the point of these political vocabularies was—from the very beginning, as it were—to conceal the operations of power and facilitate the production of “docile subjects.” Nothing could be further from the truth, even if we acknowledge the contributions made by late-eighteenth- and early-nineteenth-century reformers (such as Bentham) to the project of disciplinary surveillance.⁵⁰

Political or social institutions are often sites of “normalizing surveillance,” just as the public itself (at least in its robust republican formulation) was clearly intended to create a certain shame-inducing transparency.⁵¹ In this sense, Foucault was right: being “forced to be seen” is just as troubling a project as being “forced to be free.” But there is an enormous difference between the civic republican’s inveterate suspicion of the private (a suspicion noted and rebuked by Constant in the strongest possible terms) and the idea that republican government itself exists primarily as a vehicle of and for surveillance. Similarly, we can acknowledge that liberal constitutionalism is often ineffectual in dealing with the “politics of everyday life.” However, that does not render it essentially a Trojan horse for the operation of disciplinary practices. To think that it is requires falling back

on the notion of conspiratorial class rule (something Foucault himself was not always above).⁵² It also demands the conflation of the origins of specific disciplinary “technologies” with their contemporary functions. Foucault, good Nietzschean that he was, was always careful to distinguish the two. His epigones have largely thrown such methodological precautions to the wind.

Even if public-political institutions are not just vehicles of domination (as both Weber and Adorno, in addition to Marcuse and Foucault, suggest), we are still left with a troubling question. What can “the public” and political institutions be in a world so dramatically constrained by the imperatives of the global marketplace and the ubiquity of bureaucratic hierarchy and bureaucratic process?

The essays in this volume do not pretend to offer any easy answers to this question—in many respects, *the* question of political theory in the “late modern” age. Rather, they are intended to show two things: first, how a “liberal republican” range of theoretical possibilities was opened in the wake of the French Revolution; and second, how fears about bureaucratic despotism and “social tyranny” transformed into something altogether different with the advent of the twentieth century—namely, the idea of a “soft totalitarianism” that supposedly afflicts the liberal democratic regimes of the present.

Anyone who has studied either the thought of Hannah Arendt or genuinely totalitarian regimes will find the latter locution—probably first deployed by Herbert Marcuse in *One Dimensional Man*—irresponsible and misleading. It is irresponsible because it is, quite simply, an example of unconstrained hyperbole. As such, it has no place in political or social theory. It is misleading because it blinds us to the real nature of the dangers we face in the present. These, I would suggest, are far closer to the “neo-absolutism” recently analyzed by Elaine Scarry than to the “total system” suggested by Marcuse.

The political world we inhabit is increasingly Schmittian in nature. It is a world in which “national emergency” and the so-called “war on terror” have seemingly revealed the profoundly conditional—not to say ultimately fictitious—nature of constitutional restraints. Schmitt—and before him, Hobbes—apparently has been proven right: the rule of law stops at (and depends on) the moment of sovereign definition and decision. The only way of combating this bogus inevitability is to reclaim our capacity for action as *citizens*, rather than as members of single-issue focused interest groups. We must insist *as citizens* that the increasingly regular suspension

of constitutional limits and restraints (for example, warrantless wiretapping) is both unconstitutional and un-American. We must reject the mindless (Schmittian) patriotism of the call to “strike back” for the *constitutional* patriotism that lies at the heart of the “American experiment.”⁵³

This is not easy to do in a political context where virtual one-party rule has effectively neutered constitutional checks and balances.⁵⁴ Yet it is a duty incumbent on anyone who views politics as something more than a “decision procedure,” or a way of deciding “who gets what, when, where and how.” As I note in chapter 5, Mill once observed that a “political machinery does not run by act of itself. As it is first made, so it has to be worked, by men, and even by ordinary men. It needs, not their simple acquiescence, but their active participation.”⁵⁵ We Americans have been used to thinking of our Constitution as a “machine that runs by itself” for far too long. As the last six years have shown, the institutional machine—the multi-tiered system of power put in place by the Constitution—can break down, and its checks and balances all but neutralized. It can be retooled for what are, essentially, illiberal or authoritarian purposes.

Beyond the realization of our political liberty, the purpose of public freedom is to make concrete—to actualize—the “active and constant surveillance over their [the people’s] representatives.” This is something Constant, echoing Locke, thought essential to any constitutional regime. In this regard, public freedom is not the alternative to, or antithesis of, representative government.⁵⁶ It is, rather, an absolutely essential element of any representative system.⁵⁷ Where trust has been betrayed by officeholders and bureaucrats, public freedom is one crucial avenue for restoring the balance. We cheat ourselves, our country, and our children if, like Hobbes, we think such freedom doesn’t exist, or that—between elections, at least—we are subjects rather than citizens, utterly bereft of the power to act and, indeed, to decide.